IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 310 OF 2005

Vijay Balkrishna Dandekar. ... Appellant.
Versus.
State of Maharashtrta & others. ... Respondents.

Mrs.Neeta Karnik for the Appellant.

Mrs.Geeta Mulekar, A.G.P. for the Respondent No.1 & 2.

Shri N.V.Walavalkar with Shri Rahul Kate for the Respondent No.6.

CORAM : ABHAY S. OKA, J.

DATED : 10th March, 2005.

P.C.:

1. Heard the learned Advocate appearing for the Appellant, the learned A.G.P. for the Respondents Nos.1 and 2 and Shri Walavalkar for the Respondent No.6. The learned Counsel for the Appellant states that notice is served on the Respondent No.3 and the Respondents Nos.4 and 5 are the Constituted Attorneys of the Appellant.

2. After arguing the Appeal for sometime, the learned Advocate for the Appellate stated that the Appellant desires to prefer appeals against the order dated 13th November 2003 passed by the Additional Collector, Thane, having his office at Jawhar and the orders dated 28th October 2004 and 3rd December 2004 passed by the Tahsildar, Palghar. The learned Advocate for the Appellant submitted that the Appeals will be filed within a period of three weeks from today and till disposal of the Appeal which may be filed against the order dated 13th November 2003 passed by the Additional

Collector, Thane, the orders dated 28th October 2004 and 3rd December 2004 passed by the Tahsildar, Palghar, should not be acted upon. She stated that in case the order passed in the Appeal is adverse to the Appellant, protection be continued for a reasonable time. She further stated that the Appellant be permitted to withdraw the suit filed in the trial Court with liberty to prefer appeals as stated above and all questions on merit may be kept open.

3. I have heard the learned A.G.P. for the Respondents Nos.1 and 2 and the learned Counsel appearing for the Respondent No.6. After having heard the learned Counsel, I find that the request made by the learned Counsel for the Appellant is reasonable.

4. Hence I pass the following order:

(i) The prayer made by the Appellant for permission to withdraw Special Civil Suit No.107 of 2004 filed by him in the Court of the Civil Judge, Senior Division, Palghar is granted. Accordingly the said suit is allowed to be withdrawn with liberty to prefer Appeals for challenging the order dated 13th November 2003 passed by the Additional Collector, Thane having his office at Jawhar and the orders dated 28th October

2004 and 3rd December 2004 passed by the Tahsildar, Palghar.

(ii) In view of the withdrawal of the suit, the impugned order passed on the Application at Exh.5 has become inoperative.

(iii) If the Appeals as stated above are filed within a period of three weeks from today, the orders dated 28th October 2004 and 3rd December 2004 passed by the Tahsildar, Palghar, shall not be enforced and no coercive steps shall be taken against the construction made by the Appellants till disposal of the Appeal which may be preferred by the Appellants for challenging the order dated 13th November 2003.

(iv) If decision in the Appeal preferred for challenging the order dated 13th November 2003 is adverse to the Appellant, the protection granted by this order will continue to operate for a period of four weeks from the date of communication of the order to the Appellant.

(v) All questions on merits are kept expressly open and the Appeals which may be preferred

by the Appellant will be decided on its own merits without being influenced by the impugned Judgment and Order.

(vi) In case the Appeals are not preferred by the Appellants within the stipulated time, the Appellant will not be entitled to the interim protection granted by this order.

(vii) If the Appeals are preferred by the Appellants as stated above, the same shall be heard and decided as expeditiously as possible and in any event on or before 31st August 2005.

(viii) It is made clear that till disposal of the said Appeals no further construction will be carried out by the Appellants or any person on his behalf in the suit property.

(ix) The Appeal is disposed of in the above terms with no order as to costs.

(x) The parties and the concerned authorities shall act on an authenticated copy of this order.

Judge.